

- (1) Whether the Administrative Law Judge exceeded his jurisdiction in deciding this matter after a request to the Director for reassignment pursuant to K.S.A. 44-523(c), but before the assignment was made.
- (2) Whether claimant is entitled to temporary total disability benefits for the period March 29, 1994 through April 27, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue regarding the Administrative Law Judge's jurisdictional right to decide this matter, taking into consideration the language of K.S.A. 44-523(c), has been ruled upon by the Appeals Board in the case of Morton v. Bartel Sales & Service and the Kansas Workers Compensation Fund, Docket No. 165,856. In that decision the Appeals Board found that while K.S.A. 44-523(c) provides that when an award is not made within 30 days and a request is made to reassign the case, the ". . . director shall assign the matter to an assistant director or a special administrative law judge . . ." The Appeals Board does not consider this request for reassignment to deprive the administrative law judge of jurisdiction until such time as the director transfers the case by assigning it to a new administrative law judge. The initially assigned administrative law judge retains jurisdiction until that time. The Administrative Law Judge was not in violation of K.S.A. 44-523(c) when he issued his Award after the claimant requested a transfer to another judge, but before the reassignment had been made by the Director.

The Appeals Board further finds that claimant is entitled to temporary total disability benefits for the period March 29, 1994 through April 27, 1994. The medical reports of Dr. Mark Melhorn returned claimant to light medium work with repetitive tasks four (4) out of every eight (8) hours. The April 8, 1994 report of Dr. Melhorn goes on to find that modified work is appropriate if the employer can accommodate the claimant. Dr. Melhorn states, ". . . off if not." which the Appeals Board interprets to mean that if accommodated work by the employer cannot be provided, then claimant is to be off work and temporary total disability benefits would be appropriate. The Appeals Board recognizes that it is the claimant's burden to prove by a preponderance of the credible evidence his entitlement to benefits on each issue raised. See K.S.A. 44-501 and K.S.A. 44-508(g). The Appeals Board finds that the medical reports of Dr. Melhorn sufficiently satisfy the claimant's burden of proof in this matter and temporary total disability benefits are awarded for the period in question.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Nunc Pro Tunc Award of Administrative Law Judge John D. Clark, dated December 22, 1994, shall be and is hereby reversed, and the original Award of Administrative Law Judge John D. Clark, dated December 20, 1994, granting temporary total benefits for the period March 29, 1994 through April 27, 1994 at the rate of \$210 per week shall be and herein is reinstated. Claimant is entitled to temporary total disability benefits for 4.29 weeks, representing the period March 29, 1994 through April 27, 1994 at the rate of \$210 per week, for a total of \$900.90, all of which is due and owing and ordered paid in one lump sum.

The remaining findings of the Administrative Law Judge in his Order of December 20, 1994, not in contravention of this Order, are affirmed and claimant is awarded an additional 17.74 weeks temporary total disability compensation at the rate of \$210 per week, totaling \$3,725.40, which is also due in one lump sum, making a total award of \$4,626.30.

Medical expenses incurred by the claimant are awarded per the Award of Administrative Law Judge John D. Clark, Finding No. 3.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent to be paid as follows:

Barber & Associates	
Transcript of regular hearing	\$118.70
Deposition of preliminary hearing	\$123.95

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Robert G. Martin, Wichita, KS
Eric R. Yost, Wichita, KS
John D. Clark, Administrative Law Judge
George Gomez, Director